

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

MARY ANN ARAGON,

Plaintiff,

vs.

No. CIV 01-1270 JC/JHG

NEW MEXICO INSTITUTE OF MINING  
& TECHNOLOGY and NEW MEXICO  
HUMAN RIGHTS COMMISSION OF THE  
STATE OF NEW MEXICO,

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER came on for consideration of the New Mexico Human Rights Commission's Motion to Dismiss, filed November 14, 2001 (*Doc. 2*) and Motion to Remand, filed November 30, 2001 (*Doc. 5*). The Court has reviewed the motions, the memoranda and exhibits submitted by the parties, and the relevant authorities. The Court finds that Plaintiff's Motion to Remand is not well taken and will be denied. The Court further finds that the New Mexico Human Rights Commission's Motion to Dismiss is well taken and will be granted.

**I. Background**

Plaintiff Mary Ann Aragon is a former employee of the New Mexico Institute of Mining & Technology ("NM Tech"). Plaintiff applied for several positions with NM Tech. NM Tech failed to hire her for any of the openings. Plaintiff now claims that NM Tech discriminated against her based on national origin and age.

In May of 2001, Plaintiff filed an EEOC charge of discrimination against NM Tech

alleging violations of Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967. On September 6, 2001, the EEOC sent Plaintiff a “Right to Sue” letter. On the same date, the New Mexico Department of Labor, Human Rights Division, sent Plaintiff an Order of Nondetermination, informing Plaintiff that her complaint was closed and she had thirty days to file a notice of appeal in the district court of the county where the alleged discriminatory practice occurred.

Plaintiff then filed her Complaint in the Seventh Judicial District Court, County of Socorro. Defendants subsequently removed the matter to federal court.

## **II. Discussion**

### **A. Motion to Remand**

Plaintiff asks the Court to remand the case to the Seventh Judicial District Court under 28 U.S.C. § 1447(c). Plaintiff argues that the Complaint and Notice of Appeal only assert claims under the New Mexico Human Rights Act. Therefore, Plaintiff argues that this Court lacks jurisdiction because there is no federal question. The Court disagrees.

The basis for federal jurisdiction in this case is 28 U.S.C. § 1331, the federal question statute. This section confers jurisdiction over cases “arising under” federal law. *See id.* For a case to arise under federal law, the federal question must be apparent on the face of a well-pleaded complaint, and Plaintiff’s cause of action must be created by federal law. *See Rice v. Office of Servicemembers’ Group Life Insurance*, 260 F.3d 1240, 1245 (10th Cir. 2001). Here, Plaintiff’s cause of action is based on two federal statutes--Title VII of the Civil Rights Act and the Age Discrimination and Employment Act. Thus, the Court has federal jurisdiction over this matter. Accordingly, Plaintiff’s Motion to Remand is denied.

**B. Defendants' Motion to Dismiss**

In reviewing Defendants' Motion to Dismiss, the Court bears in mind that all well-pleaded allegations in the complaint are accepted as true and views these allegations in the light most favorable to the nonmoving party. *See Stidham v. Peace Officer Standards & Training*, 265 F.3d 1144, 1149 (10th Cir.2001) (quotation omitted). Because Plaintiff is pro se, the Court also construes her pleadings liberally. *See Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir.1999).

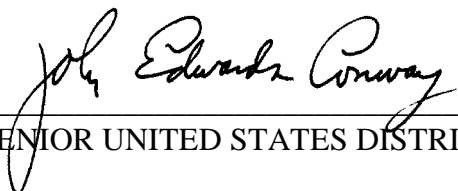
Defendants move to dismiss Human Rights Commission of the State of New Mexico ("HRC") because Plaintiff fails to state a claim against the HRC. The Court agrees. The allegations in Plaintiff's complaint only state a claim against NM Tech. Accordingly, Defendants' Motion to Dismiss the HRC is granted.

Wherefore,

IT IS ORDERED that Plaintiff's Motion to Remand, filed November 30, 2001 (*Doc. 5*) is denied.

IT IS FURTHER ORDERED that the New Mexico Human Rights Commission's Motion to Dismiss, filed November 14, 2001 (*Doc. 2*) is granted.

DATED December 18, 2001.

  
SENIOR UNITED STATES DISTRICT JUDGE

Plaintiff, pro se:

Mary Ann Aragon  
Socorro, New Mexico

Counsel for Defendants:

Sean Olivas, Esq.  
Keleher & McLeod, P.A.  
Albuquerque, New Mexico